

IN THE SUPREME COURT OF THE UNITED STATES

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TODD RASBERRY, PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether law enforcement agents permissibly detained and frisked petitioner in a motel room after the renter consented to their search of the room.

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No. 18-5296

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A18) is reported at 882 F.3d 241.

JURISDICTION

The judgment of the court of appeals was entered on February 14, 2018. A petition for rehearing was denied on April 25, 2018. (Pet. App. A34). The petition for a writ of certiorari was filed on July 11, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

Following a guilty plea in the United States District Court for the District of Maine, petitioner was convicted of possession of heroin with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C). He was sentenced to 138 months of imprisonment, to be followed by three years of supervised release. Judgment 1-3. The court of appeals affirmed. Pet. App. A1-A18.

1. In 2015, Drug Enforcement Administration Special Agent Paul Wolf was on the trail of petitioner, a suspected major drug dealer in Maine whose primary alias was "Champagne." Agent Wolf reviewed petitioner's criminal history, which showed numerous drug arrests and an arrest for an assault that appeared to involve a firearm. Agent Wolf also learned that in 2014, police had arrested petitioner in a motel room in which drugs and a firearm were seized. Pet. App. A2-A3; Gov't C.A. Br. 1-3.

In July 2015, an informant identified Julie Wilson as one of petitioner's drug couriers. On July 15, Agent Wolf confronted Wilson outside a motel in Portland, Maine, as she was preparing to deal heroin. Wilson gave the heroin to Agent Wolf, identified "Champagne" as her supplier, and told Agent Wolf that Champagne was currently staying in a motel room in Scarborough that she had rented. Wilson consented to a search of the motel room and gave the key card to the room to Agent Wolf. Pet. App. A2-A3; Gov't C.A. Br. 3-4.

Agent Wolf and other agents went to the motel room, but the key card did not work. Agent Wolf knocked on the door. Petitioner answered the knock and told Agent Wolf that he was a guest in the room. The agents informed petitioner that they were there to search the premises and that although petitioner was not under arrest, he would be detained during the search. Pet. App. A3-A4.

Inside the room, one agent handcuffed petitioner and patted down the bottom of petitioner's lower back -- the area that petitioner might have been able to reach despite handcuffs -- while two other officers swept the premises to ensure that no one else was present. The officers searched the room for 20 minutes, finding drug paraphernalia -- baggies, needles, and a plastic scale -- but no drugs. When petitioner asked Agent Wolf to remove the handcuffs, Agent Wolf replied that he would have to frisk him to ensure that he had no weapons. Pet. App. A4.

Agent Wolf began a frisk and felt a hard round object the size of a tennis ball in petitioner's groin area. When asked about it, petitioner replied that it was part of his anatomy. Agent Wolf arrested petitioner, and, reaching into petitioner's undershorts, seized a ball of baggies containing heroin and cocaine. Pet. App. A4.

2. A federal grand jury returned a three-count indictment charging petitioner with various controlled-substance offenses. Pet. App. A4-A5. Petitioner filed a pretrial motion to suppress

the drugs seized from his person. After an evidentiary hearing, the district court denied the motion. No. 15-cr-127, 2015 WL 7258479.

First, the court found that the officers made a "consensual entry" into the motel room after Agent Wolf "had obtained written consent to search the hotel room from the woman who had rented it." 2015 WL 7258479, at \*2. Second, the court determined that petitioner was validly detained under Terry v. Ohio, 392 U.S. 1 (1968), based on reasonable suspicion that he was trafficking drugs. 2015 WL 7258479, at \*2-\*3. Third, the court found that the agents permissibly placed petitioner in handcuffs for their safety and permissibly detained him for the duration of the 20-minute search based on the nature of the investigation and petitioner's prior criminal history, which included arrests for guns and drugs. Ibid. Fourth, the court determined that the frisks of petitioner were lawful, because the officers had reasonable suspicion to believe that petitioner was armed and dangerous and that the object in petitioner's groin area was lawfully seized under the "plain feel" doctrine. Id. at \*3. The court alternatively concluded that the discovery of the object gave the officers probable cause to arrest petitioner for carrying contraband and to search him incident to that arrest. Ibid.

Petitioner pleaded guilty to one count of possessing heroin with intent to distribute in violation of 21 U.S.C. 841(a)(1) and

(b)(1)(C). Judgment 1. He reserved his right to appeal the denial of his suppression motion.

3. On appeal, petitioner raised multiple Fourth Amendment claims with respect to the detention and frisks after the police entered the motel room. He did not, however, claim that the entry of the police into the motel room itself violated the Fourth Amendment. Pet. C.A. Br. 2.

The court of appeals affirmed. Pet. App. A1-A18. First, the court determined that the police lawfully detained petitioner in the motel room based on reasonable suspicion that he was dealing drugs there and that the handcuffing of petitioner and sweep of the premises did not transform that detention into an arrest that required probable cause. Id. at A7-A11. Second, the court found that the 20-minute detention did not exceed the limits of a reasonable-suspicion-based stop under Terry, supra. Pet. App. A11-A12. Third, the court determined that the initial limited frisk of petitioner's lower back and the subsequent pat-down of his person was justified under Terry, because the agents had reason to believe that petitioner was armed and dangerous based on the drug crime under investigation and petitioner's prior criminal record. Id. at A11-A13. Fourth, the court found that the seizure of the drugs from petitioner's undershorts was reasonable because the pat-down gave the police probable cause to believe that petitioner was carrying drugs, justifying his arrest and a search

of his person incident to that arrest. Id. at A13-A16. Finally, the court of appeals determined that the seizure of the drugs was not unduly invasive or degrading. Id. at A17-A18.

4. Petitioner filed a pro se petition for rehearing in which he argued that (1) entry into the motel room violated the Fourth Amendment because he did not consent to the entry; (2) Terry does not apply to detentions inside a residence; and (3) the frisk was unreasonable as petitioner was no threat to the police. Pet. App. A22-A33. The court of appeals denied rehearing. Id. at A34.

#### ARGUMENT

Petitioner contends (Pet. 6-9) that reasonable suspicion that a person has committed a crime does not permit the police to enter a residence without a warrant and detain that person inside the residence. The court of appeals, however, did not hold otherwise. In the panel proceedings below, petitioner did not challenge either the agents' warrantless entry of the motel room -- which was lawfully based on the renter's consent -- or the lawfulness of at least some form of detention once the agents were inside. The court of appeals correctly rejected petitioner's fact-bound claims about the length and circumstances of his detention, the search of his person, and the seizure of the drugs found hidden on him -- none of which he renews in this Court -- and the decision below does not conflict with any decision of this Court or another court of appeals. No further review is warranted.



1. The agents in this case lawfully entered and searched the motel room based on the consent of Wilson, the renter of the room. See Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973); see also, e.g., United States v. Key, 889 F.3d 910, 912 (7th Cir. 2018); United States v. Mack, 808 F.3d 1074, 1083-1084 (6th Cir. 2015), cert. denied, 136 S. Ct. 1231 (2016). The district court found that Wilson consented (in writing) to the search of her motel room, 2015 WL 7258479, at \*2, and petitioner did not challenge the lawfulness of the entry or search of the room in his appeal. See Pet. C.A. Br. 2, 5; see also Pet. App. A3 (court of appeals stating that Wilson "gave Wolf a key to the room and consented to its search"). He presented Fourth Amendment claims relating to his detention and frisks by the police after they entered the motel room, see Pet. C.A. Br. 2, but acknowledged that the entry into the room was based on Wilson's consent. Id. at 5 ("[S]he supplied a key and gave consent to search.").

Petitioner likewise did not challenge the agents' authority to detain him upon entering the room. The Fourth Amendment allows police officers to conduct a brief investigative stop or detention when they have reasonable suspicion to believe that an individual is involved in criminal activity. See, e.g., Navarette v. California, 572 U.S. 393, 396-397 (2014); Terry v. Ohio, 392 U.S. 1, 21-22 (1968). Petitioner here "d[id] not dispute that -- at the moment the motel room was entered -- the officers had

reasonable suspicion sufficient to initiate a Terry stop.” Pet. App. A8. In this case, the police had reasonable suspicion to detain petitioner in the room based on Wilson’s statement that petitioner and drugs were present in her motel room, petitioner’s criminal record that included drug and weapons arrests, and petitioner’s recent arrest at a motel room in which drugs and weapons were found. Id. at A3; Gov’t C.A. Br. 2-3.

Petitioner first raised his consent argument in a petition for rehearing, and thus forfeited the argument. See United States v. Edwards, 857 F.3d 420, 426 n.11 (1st Cir.), cert. denied, 138 S. Ct. 283 (2017). This Court is one of review, not first view, e.g., Byrd v. United States, 138 S. Ct. 1518, 1527 (2018), and no sound basis exists for reviewing petitioner’s forfeited and meritless claim that a warrant was required in the circumstances of this case.\*

2. The decision below does not conflict with the decisions of any other court of appeals. None of the decisions cited by petitioner supports his claim that a warrant was required in this case. See Moore v. Pederson, 806 F.3d 1036, 1048 (11th Cir. 2015) (noting that reasonable suspicion cannot justify entry into a

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\* The issues actually addressed by the court of appeals -- the length and manner of petitioner’s detention and the discovery of the drugs in his underpants after the detention, see Pet. App. A6-A7 -- are not included in the petition presented. See Pet. 1. In any event, for the reasons given by the court of appeals, petitioner’s arguments on those issues lack merit. See Pet. App. A7-A18.

home), cert. denied, 136 S. Ct. 2014 (2016); Armijo v. Peterson, 601 F.3d 1065, 1072-1074 (10th Cir. 2010) (reasoning that exigent circumstances justified a seizure inside the home), cert. denied, 562 U.S. 1224 (2011); United States v. Lewis, 608 F.3d 996, 1000-1001 (7th Cir. 2010) (reasoning that a Terry seizure inside an apartment was justified by reasonable suspicion); United States v. Myers, 308 F.3d 251, 258 (3d Cir. 2002) (noting, after assuming arguendo that Terry applies inside a home, that Terry would "allow the officer to exercise control over [an occupant] to protect himself and secure the situation").

#### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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